

REMARKS

Claims 1-8, 10, 11, 13, and 15-22 are currently pending, claims 16-18 and claim 23 having been withdrawn. Claims 1-8, 10, 11, 13, and 15-22 stand rejected under 35 U.S.C. §§ 112, second paragraph and 103(a).

Claims 1 and 13 have been amended. Accordingly, in view of the above amendments and for the reasons provided below, the Applicant respectfully traverses the grounds for rejection. Withdrawal of the grounds for rejection is respectfully requested.

The courtesy of a telephone interview is respectfully requested prior to a first action on the merits of this amendment.

SECTION 112, SECOND PARAGRAPH REJECTIONS

Claims 1 and 13 have been amended. Accordingly, the grounds for rejection are now believed to be moot. Withdrawal of the grounds for rejection is respectfully requested.

SECTION 103(a) REJECTIONS

Claims 1, 5, 10, 11, and 15 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Number 4,864,801 to Fallas ("Fallas '801") in view of U.S. Patent Number 4,805,379 to Leibetseder, et al. ("Leibetseder"); claims 2-4 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fallas '801 and Leibetseder, further in view of U.S. Patent Number 5,430,994 to Focke ("Focke"); claims 6-8, 13, 20, and 22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fallas '801 and

Leibetseder, further in view of U.S. Patent Number 5,123,231 to Fallas ("Fallas '231"); and claims 19 and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fallas '801, Leibetseder, Focke, and Fallas '231. The Applicant respectfully traverses the grounds for rejection for the following reasons.

Claims 1, 5, 10, 11, and 15

In her Response to Arguments, the Examiner has rejected previous arguments, maintaining that Leibetseder shows that the holder is carried by both a pressure-controlled air cylinder (35) and a drive (29) and, moreover, that Leibetseder's drive (29) is controlled by a programmed controller and mechanically related to the cylinder (35) and, hence, to sensors on said cylinder.

Leibetseder states that;

**the piston actuator 35 is operated to lower the layer-forming means** until they extend into the carton as far as to the bottom or to the previously deposited layer. **By means of a piston actuator 29, the flexible bottom is deflected around a corner and pulled upwardly** so that the layer previously contained in the layer-forming means is deposited in the carton in an orderly arrangement.

Leibetseder, col. 4, line 63 to col. 5, line 3 (Emphasis added). Nothing in Leibetseder suggests that "piston actuator 29" carries any of the weight of the layer-forming means. "Piston actuator 35" explicitly lowers the layer-forming means. "Piston actuator 29" merely slides the flexible bottom so that the cups fall onto the previously loaded layer of cups.

Notwithstanding, claim 1 has been further amended to recite that the "drive" removes the holder from the container by itself, i.e., carries the entire weight, (which Leibetseder's "piston actuator 29" does not do) and determines when the holder is at an appropriate level (which Leibetseder's "piston actuator 29" also does not do). Accepting, *arguendo*, the Examiner's assertions that Leibetseder's controller and sensors constitute part of the drive, the sensors "measure the elevation of the layer-forming means" (*Id.*, col. 5, lines 52-35), which is not the same as the claimed to determine, when lowering said holder into said container, "when a portion of the weight of said holder and said at least one of the plurality of bags and the plurality of netting packages has been transferred to the container or to an object in the container by sensing a weight change." Leibetseder uses elevation, whereas the invention as claimed uses a change in weight. The two are not the same nor does one suggest the other.

Accordingly, the Applicant respectfully maintains that independent claim 1 and all claims depending therefrom satisfy all of the requirements of 35 U.S.C. §§ 101, *et seq.* -- especially §102(b) -- and are in condition for allowance. Withdrawal of the grounds for rejection is respectfully requested.

Claims 2-4

Nor can the Focke reference make up for the deficiencies of the Fallas '801 and Leibetseder references. Focke does not teach, mention or suggest a combination of a pressure controlled air

cylinder and a driver in which the latter carries some portion of the weight of the holder (and the goods thereon) while inserting the holder in a container and carries all of the weight of the holder while removing the holder from the container; controlling the vertical location of the holder; or sensing a change in weight when lowering the holder into the container, to determine vertical position.

Claims 6-8, 13, 20, and 22

Nor can the Fallas '231 reference make up for the deficiencies of the Fallas '801 and Leibetseder references. Fallas '231 does not teach, mention or suggest and a driver in which the latter carries some portion of the weight of the holder (and the goods thereon) while inserting the holder in a container and carries all of the weight of the holder while removing the holder from the container; controlling the vertical location of the holder; or sensing a change in weight when lowering the holder into the container, to determine vertical position.

Claims 19 and 21

Nor can the Focke and Fallas '231 references make up for the deficiencies of the Fallas '801 and Leibetseder references. The combination of Focke and Fallas '231 likewise does not teach, mention or suggest and a driver in which the latter carries some portion of the weight of the holder (and the goods thereon) while inserting the holder in a container and carries all of the weight of the holder while removing the holder from the container;

controlling the vertical location of the holder; or sensing a change in weight when lowering the holder into the container, to determine vertical position.

The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

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AQUARIUS

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